
(1982) 05 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Petition No. 934 of 1972

Indian Aluminium Cables Ltd.

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 07-05-1982

Acts Referred:

Citation : (1982) 22 DLT 19 : (1982) 10 ELT 467

Hon'ble Judges : Prakash Narain, C.J;Gian Chand Jain, J

Bench : Division Bench

Judgement

Prakash Narain, C.J.—The Petitioner carries on the business of manufacture and sale of aluminium conductors used for transmission of high voltage of electric current. It has its factory, amongst other places, at Faridabad in the State of Haryana.

2. In the process of manufacture of aluminium conductors, the petitioner obtains at an intermediary stage, what is described as aluminium rods, which are further processed to manufacture aluminium conductors and cables. The said intermediary products, according to the petitioners, is obtained by a specialised process known as the "Properzi Process". The resultant product, according to the Petitioner, is aluminium rods, known both technically as well as commercially as properzi rods. The basic raw material required for the manufacture of this product is E.C. Grade Aluminium ingots on which admittedly, excise duty is paid. The said intermediary product has been regarded by the excise authorities as attracting duty under Entry No. 27(a)(ii) of the First Schedule to the Central Excises and the Salt Act, 1944. The Petitioner contests the levy. It contends that the properzi rods manufactured by it are not "wire bars, wire rods and castings". The petitioner's case is that both commercially and technically the properzi rods are not aluminium wire rods which are distinct commercial commodity and so Entry 27(a)(ii) cannot be invoked by the excise authorities.

3. The Petitioner also contends that the properzi rods manufactured by it can also be regarded as pipes and tubes, other than extruded pipes and tubes

mentioned in Entry 27(d). Entry 27(a) and (d) read as under :-

(a) (i) In any crude form including 50% ad valorem plus ingots, bars, slabs, billets, Rs. 2000/- per metric shots and pellets tonne. (ii) Wire bars, wire rods and 50% ad valorem plus casting, not otherwise Rs. 2000/- per metric specified tonne. (b) (c) (d) Pipes and tubes other than 50% ad valorem plus extruded pipes & tubes Rs. 2000/- per metric tonne.

4. According to the petitioner the properzi process is a specialised process in which aluminium ingots are charged in melting furnace; each charge consists of 2500 pounds and takes about 30 minutes for melting. After melting, the aluminium at about 750 degrees centigrade is transferred to holding furnace. Two holding furnaces are essential for continuous supply of melted aluminium to casting machine. From holding furnace, the melted metal is taken to rotating copper mould. The speed of the mill is between 2-4 R.P.M. dependent on production needed. A wheel has on its outer surface a continuously moving endless belt made of steel strip. As soon as the metal is poured, it is held between the groove of the copper metal and the steel belt. As this is cooled from inside and outside by water sprays by the time the metal comes up on the rotating wheel it is solidified and emerges in the form of a continuous bar. This continuous bar is automatically fed into the rolling passes while the bar is still hot so as to subject it to hot rolling. The rolling passes consist of 13 progressive passes. Through these passes, hot bar is rolled and after such progressive hot rollings, the bar comes out in the form of hot rolled rod of 9.5 mm diameter in continuous lengths. This rod is known as properzi rod. Inasmuch as the properzi rod is obtained in continuous length the same is corrected as coils of suitable length. Even when the properzi rods emerge from the rolling passes, its temperature is between 200 to 250 degrees Centigrade. Here the process ends and the product sought to be covered by excise duty comes into existence. This product is later on by a different process converted into conductors which the petitioner claims it manufactures. As noticed earlier, petitioner's case is that properzi rods are a distinct and different commercial commodity as against wire rods and are not known to the market as wire rods. The said properzi rods cannot also be described as wire bars or castings which according to the petitioner are completely different and distinct commodities.

5. The conflict between the petitioner and the excise authorities came about in this way. By an order dated September 2, 1970, the Superintendent, Central Excise, S.R.P. II, Faridabad, called upon the petitioner to clear properzi rods after payment of duties as aluminium wire rods under item 27(a)(ii) of the Central Excise Tariff. Being aggrieved by the said order, the petitioner filed an appeal u/s 35 of the aforesaid Act before the Deputy Collector of Central Excise, Chandigarh. The said appeal was dismissed on February 7, 1972. The Deputy Collector held that the product in question attracted levy of excise duty as wire rods within the meaning of Entry 27(a)(ii). Aggrieved by the order of the Deputy Collector, petitioner filed a revision u/s 36 of the Act to the Central Government.

The Central Government set aside the order of the Deputy Collector and remanded the case back to him. The Appellate Collector, Respondent No. 2, heard the appeal on July 22, 1972, but rejected the same by an order of September 7, 1972. The Appellate Collector held that the production in question was obtained first by a process of casting as cast bars and ultimately comes out in the form of rods having a diameter of 9.5 mm. In his opinion, the generality of the terminology of Entry 27(a)(ii) clearly covered the product which could be described as wire rod. Incidentally, the Appellate Collector took assistance from the definition of the term "wire rod" in the Indian Customs Tariff Guide in which it is said that wire rod is of any shape generally round and between 5 mm and 14 mm diameter and is intended for conversion into wire. According to the Appellate Collector, the question as to whether in common trade parlance the product was known as properzi rod as distinguished from wire rod was not material. The petitioner contest this and has come up to this court under Article 226 of the Constitution contending that a wholly illegal and uncalled for approach has been adopted by the excise authorities in coming to the conclusion that the aforesaid product is covered by Entry 27(a)(ii).

6. Rule Nisi was issued by a Bench of this Court and some interim relief on stated terms was also given. The respondents have filed two affidavits by way of return to the rule. Both the affidavits are sworn by Shri Lakhinder Singh, Assistant Collector, Central Excise Division, Faridabad. According to the first affidavit filed on March 1, 1976, the petitioner applied for the grant of L. 4 license to manufacture aluminium wire rods on June 2, 1969. This license was issued on June 25, 1969 for manufacture of aluminium wire rods. The license was renewed for the year 1970 and subsequently for the year 1971. The petitioner submitted its first classification list in Form No. 1 on October 10, 1969 declaring therein that the product to be manufactured or warehoused was "aluminum wire rods 3/8" being manufactured out of ingots after payment of duty under Central Excise Tariff Item 27(a)". This declaration was approved on November 21, 1969 and the petitioner was allowed to clear the goods described therein free of duty under Notification No. 17/69, dated March 1, 1969. On March 25, 1970 the petitioner was requested by the Superintendent, Central Excise, S.R.P. II, Faridabad to submit a revised Form No. 1 as the rate of duty had been changed from specific to ad valorem by a notification bearing No. 46/70 dated March 1, 1970. The relevant exemption was rescinded by Notification No. 74/70, dated March 26, 1970. The petitioner submitted four copies of the application in Form No. 1 and therein described as excisable goods produced and manufactured in its factory again as "aluminum wire rods 3/8" being manufactured out of ingots after payment of duty under Tariff Item 27(a) and also sought exemption from duty under notification No. 46/70, dated March 1, 1970. The Superintendent, Central Excise S.R.P. II, Faridabad, could not give approval of the classification list as filled. This was so because the correct entry under which excise was leviable, according to him, was Item 27(a)(ii) on the basis of the description of the goods given by the petitioner in column 4(a) of the said form. The petitioner

had said in column 4(c) that nil duty was to be paid, but the Superintendent corrected that to read that duty attracted was 25% ad valorem plus 20% of the basic duty as special excise duty. This was done because the Notification No. 46/70, dated March 1, 1970 relied upon by the petitioner to claim exemption from payment of duty had been rescinded by Notification No. 74 of 1970, dated March 26, 1970. The Superintendent asked the petitioner to submit revised form No. 1 on March 25, 1970, but the same was submitted only on August 18, 1970. Till as late as September 30, 1970 the petitioner had not at any time raised the question of the product being anything else than wire rod. However, as noticed earlier, the petitioner had gone up in appeal, and then filed a revision. On remand the appellate authority again held that duty was attracted under Entry 27(a)(ii).

7. The respondents have raised a preliminary objection that the petitioner having filed a revision u/s 36 of the Act from the order of the Appellate Collector dated Sept. 7, 1972, it should not have filed the present writ petition and should have waited for the decision of the Central Government. In reply to it, the petition submits that the respondent's stand being well-known, as is clear from a reading of the counter-affidavits, prosecuting the revision would be an empty formality. We agree.

8. As we have noticed earlier, the short question for decision is whether the petitioner's stand that its product, namely, properzi rods, does not fall under Entry 27(a)(ii), is correct.

9. Learned counsel for the petitioner has strenuously urged that there is unimpeachable evidence on record, which was also placed before the excise authorities, that properzi rods are commercially a distinct commodity from wire bars and rods and casting. Therefore, no excise duty is payable at all. Reliance is also placed on ISI specifications which give different specification for wire rods and properzi rods. The distinction is sought to be made on the basis of aluminium rods obtained by the rolling process as opposed to extraction or casting processes. In this regard, reference is also made to purity of the product and the quality of the raw material as well as the end product. The process by which the petitioner obtains the aluminium rods is not in dispute. The question to be determined is whether the process of manufacture has anything to do with the product or goods described for purposes of levy of excise.

10. Admittedly, the product of the petitioner are "goods". This means that the product is a commercial commodity. It may either be utilised for home consumption or may be sold. The petitioner may be correct in saying that the manufacture of conductors would go in for properzi rods and not for any type of aluminium rods and thus commercially the commodity is distinct. The point in issue, however, is whether the properzi rods are or are not wire bars, wire rods and casting not otherwise specified within the meaning of the relevant entry.

11. Before dilating further on the question, we may with advantage notice the

three decision cited at the Bar. These are the decisions in *Dunlop India Ltd. vs. Union of India & Others*, AIR 1977 S.C. 597, *Shri Vallabh Glass Works Ltd. & Another Vs. Union of India & Another*, 1979 ELT 608 and the *Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh*,

12. In *Dunlop India Ltd.*'s case, the Supreme Court was concerned on the classification of V.P. Latex under Entries in the Indian Tariff Act. It was held that the end use of the articles was absolutely irrelevant in the context of which entry a particular commodity would fall under. It was also observed that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. Once, however, an article is classified and put in a distinct entry, the basis of classification is not open to question. The court specifically observed that technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance then there is no difficulty for statutory classification under a particular entry.

13. The decision of the Supreme Court in *M/s. Jaswant Singh*'s case was concerned with deciding under which entry "charcoal" could be placed. Relying on the scientific and technical meaning of the term, the revenue had contended that charcoal could not be classified under the General Entry of "Coal". The Supreme Court held that popular meaning and not scientific and technical meaning should be adopted in construing fiscal statutes.

14. In *Shri Vallabh Glass Works Ltd.*'s case the Gujarat High Court considered whether wire glass, figured glass, rolled glass, coloured figured glass, coolest figured glass and coolest wire glass belonged to the category of sheet glass, as was contended by the Revenue, to subject the same to excise duty under Tariff Item 23A(i) of the First Schedule of the Central Excises and Salt Act. It was held that the work "glass as mentioned in Item 23A gives the details of the items which were liable to excise duty but does not cover all types of glass. In special Item (i) only, "glass sheets" and "plate glass" are mentioned, the rest are of "glassware". Merely because the heading of the entry is wide, it would not mean that it would cover all types of the commodity, it would be covered by the general heading unless specific provision is made for those different kinds in the body of the entry or in the item itself. The rule enunciated was that the test to find out whether a commodity falls under a particular entry or not is a test of common parlance, as to how a commodity is known in the common market and in the commercial world by those who normally deal with it as buyers or sellers or as a manufacturer or as a user of such commodity.

15. The petitioner contends that properzi rods are commercially a distinct commodity from aluminium wire rods or wire bars and castings. When a person wants to purchase properzi rods, he asked for the commodity as such and not by asking that he wants wire rods or wire bars or castings. It is further urged that the special process by which properzi rods are obtained and its quality are relevant. Support for these contentions is sought from the decisions noticed

earlier.

16. The process of manufacture, in our opinion, is not relevant. Similarly, the use the end product is put to is also not relevant. What is opposite is the goods themselves. Undoubtedly the goods are one of the types of aluminium rods. Whether these rods are obtained by casting or in any other manner is not material. The petitioner obtained a L. 4 license to manufacture Aluminium Wire Rods. It is manufacturing aluminium wire rods. Because of a particular process adopted by it, known as the properzi process the end product is known as a properzi rod. It is a specie belonging to the genus of aluminium wire rods. It may be true that a user or a producer when he wants aluminium wire rods for purposes of manufacture of conductors etc., would specify that he wants properzi rods. That, however, does not change the nature of the product. The entry in question does not specify the quality of the products. It only specifies types of product. Unlike the entry, as in the Gujarat case, where plate glass etc., were specified, here the entry merely reads under the head aluminium wire rods, wire bars and castings, not otherwise specified. The argument that in the trade properzi rods are known as properzi rods and not as aluminium wire rods would have been relevant if the entry in question had divided aluminium wire rods into different kinds of aluminium wire rods. It does not do so. Therefore, there is no force in the contentions raised on behalf of the petitioner.

17. We are fortified in coming to his conclusion from the conduct of the petitioner as well. As we have noticed earlier, the license of the petitioner is for manufacture of aluminium wire rods. The classification list in Form No. 1 submitted by the petitioner on October 10, 1969 also declared the goods that it was manufacturing or were to be warehoused as "aluminum wire rods 3/8". Perhaps what has prompted the petitioner to come to court is that previously it was enjoying the exemption from payment of excise duty by virtue of Notification No. 46/70, dated March 1, 1970. This notification was rescinded by amending Notification No. 74/70, dated March 26, 1970.

18. Learned Counsel has laid some stress on the approach of the Appellate Collector and had contended that all the detailed aspects were not enquired into by the Appellate Collector, who even relied upon a definition from another statute which we had already noticed earlier. It is not necessary to dilate upon this aspect in view of the finding given above.

19. Reliance on the specifications issued by the Indian Standards Institution has also no relevance. Those specifications are only relevant for the quality of goods. Those specifications do not change the nature of the goods.

20. The result is that we discharge the rule and dismiss the petition with costs. Counsel's fee Rs. 550/-.